BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION'S APPELLATE PANEL

MORTESHA MOUZON-JOHNSON Claimant/Respondent, v. MEAD WESTVACO, Self-Insured Employer/Appellant.	)	W.C.C. FILE NO. 1219931 **DECISION AND ORDER**

Statement of the Case

The Claimant, Mortesha Mouzon-Johnson, alleges an injury to her lungs due to an accident on June 1, 2012. The Claimant was diagnosed with Asthma seven (7) years earlier and was receiving regular treatment, including prescription medications to manage her asthma, at the time of the alleged accident on June 1, 2012. On that date, June 1, 2012, the Claimant did not report any lung or respiratory problem to anyone at MeadWestavco. She did not seek or request any medical treatment on June 1, 2012. The Claimant admits that she did not even take her asthma medications on June 1, 2012.

The first medical appointment following the alleged accident was on June 4, 2012, when the Claimant attended a long-standing appointment with her personal neurologist, Dr. Bahadori. The Claimant did not report any injury to her lungs or respiratory system to Dr. Bahadori. While the Claimant discussed an alleged chemical exposure with Dr. Bahadori, the Claimant specifically stated that she had "no shortness of breath" associated with the alleged incident. (APA p.1). Furthermore, in follow-up

evaluations, Dr. Bahadori confirmed that the Claimant had no shortness of breath. (APA p. 3, p.5). According to an October 5, 2012 note from Dr. Bahadori, he was treating the Claimant for cervical radiculopathy and left upper extremity weakness and pain. Dr. Bahadori further testified that the Claimant denied any respiratory symptoms following her alleged exposure(s) at work.

The Claimant was evaluated by her personal allergist, Dr. Davidson, on June 7, 2012, at which time Dr. Davidson described the Claimant as a "30-year-old woman with a history of allergic rhinitis, allergic asthma, and a past history of facial swelling do [sic] to an allergy to shellfish..." Dr. Davidson had previously diagnosed her with allergies to pollen, dust mites, pet dander, mold, and cockroaches. The Claimant described an alleged incident at work on June 1, 2012, but she did not report any problem with, or injury to her lungs or respiratory system. (APA p. 12). Dr. Davidson stated that the Claimant's pre-existing Asthma was "stable."

The Claimant saw Dr. Davidson again on July 3, 2012, at which time she reported that she "stopped taking her Advair regularly with the warmer weather, she states she only needs to take it regularly in the winter and she denies any respiratory symptoms." (APA p. 15). By October 24, 2012, the Claimant reported to Dr. Davidson that she had "been approved for disability based on left arm and shoulder weakness" and that she only had "occasional problems with dyspnea after exertion." (APA P. 21). Similarly, on January 28, 2013, the Claimant reported that she was "doing well and denies respiratory symptoms." (APA p. 24). When the Claimant saw Dr. Davidson on May 29, 2013, she admitted "she has not been taking her Advair regularly," but even still her only complaint was some chest congestion and nasal drainage unrelated to her employment.

On August 14, 2012, Dr. Davidson completed forms in connection with the Claimant's Long Term Disability Claim against ING stating that her diagnoses were Angioedema, Allergic Rhinitis, and Food Allergy, which he further unequivocally stated were not caused by a work-related accident. (APA p. 310).

The Claimant was seen by Dr. Steve Herndon for an independent medical evaluation on May 10, 2013. Dr. Herndon stated "to a reasonable degree of medical certainty, it is unlikely that the [alleged] exposures listed would cause permanent lung damage...The chemicals that she was exposed to could have certainly exacerbated her asthma at the time of the exposure, however, they are, to a reasonable degree of medical certainty, much less likely to cause permanent lung impairment (above and beyond her preexisting disease)." Dr. Herndon has since testified that there is no objective evidence that the Claimant even has Asthma, as none of her physical exams have shown any abnormality and none of her Pulmonary Function Tests have ever shown any obstructive lung disease. Instead, the Claimant's PFTs have shown only non-work-related restrictive lung disease that has been stable over many years.

Even the Claimant's personal pulmonologist, Dr. Spandorfer, was forced to concede that the Claimant's respiratory function has improved by every objective standard since February 2012 (prior to the alleged accident). Dr. Spandorfer also admitted that there has not even been a change in the Claimant's medications after the alleged accident of June 1, 2012.

The Claimant has been out of work since July 2012 due to left arm weakness. At the time of the hearing before Commissioner Taylor, she was continuing to receive Long Term Disability benefits as a result of this left arm weakness. The Claimant never claimed that she was prevented from working due to Asthma, though she did inform her

LTD carrier that she was disabled by fatigue, migraine headaches and facial swelling. (APA pp. 753—755).

Despite the fact that the Claimant did not experience any problem with her lungs on June 1, 2012 or in the weeks or months that followed, Commissioner Taylor issued a Decision and Order on November 24, 2014 finding, *inter alia*, that the Claimant "sustained her burden of proving a compensable injury by accident (aggravation) to her lungs" and has "occupationally worsened asthma." MeadWestvaco argues that this finding, as well as the findings with regard to her need for medical and compensation benefits, are not supported by the greater weight of the evidence in the record or the applicable law. By its Form 30, MeadWestvaco requests that Commissioner Taylor's November 24, 2014 Decision and Order be reversed and vacated based on the following grounds and exceptions:

1. *The Hearing Commissioner's finding that "the Claimant has always alleged both an injury by accident pursuant to § 42-1-160, as well as an occupational disease claim pursuant to § 42-11-10" is unsupported by any evidence in the record and is otherwise arbitrary and capricious.*

2. *The Hearing Commissioner erred as a matter of law in entering a conclusory finding on a seminal issue in dispute, particularly that "[t]he Claimant has sustained her burden of proving a compensable injury by accident (aggravation) to her lungs," as this finding is impermissibly vague, unsupported by the greater weight of the evidence in the record, and is otherwise arbitrary and capricious.*

3. *The Hearing Commissioner erred in failing to elucidate the nature of the "compensable injury by accident (aggravation) to her lungs ... on June 1, 2012," especially considering the fact that the Claimant did not complain of any problem with her lungs on or about June 1, 2012.*

4. *The Hearing Commissioner erred in finding that the Claimant was "able to perform her functions as a chemist and her asthma was well controlled until her June 1, 2012 accident," as this finding is arbitrary, capricious, and unsupported by the greater weight of the evidence, which indicates that the Claimant was unable to work both before or after June 1, 2012 due to non-work-related arm weakness and Bells' Palsy, and which further indicates that the Claimant's pre-existing asthma remained stable following the alleged events of June 1, 2012.*

5. *The Hearing Commissioner erred in finding that the Claimant's "exposure to tolulene, methanol, petroleum ether, and acetone has caused occupationally worsened asthma," as this finding is arbitrary, capricious, and contrary to the greater weight of the evidence in the record, which indicates that there has been no negative change in the Claimant's pulmonary function since June 1, 2012.*

6. *The Hearing Commissioner's finding that the Claimant was "credible in her testimony and presentation" is arbitrary and capricious, especially considering the Claimant's argumentative and evasive responses to simple questions regarding the alleged events of June 1, 2012 and her wholly inconsistent long-term disability claim file.*

7. *The Hearing Commissioner erred in finding that "due to this work-related accident, the Claimant is not able to return to gainful employment as a chemist," as this finding is arbitrary, capricious, unsupported by the greater weight of the evidence, and impermissibly vague.*

8. *The Hearing Commissioner's finding that Dr. Spandorfer and Dr. Davidson are "persuasive and credible" is arbitrary and capricious, especially considering the numerous inconsistencies in their medical records and opinions.*

9. *The Hearing Commissioner erred in finding that "the Claimant reached MMI as of August 27, 2014, the date of the hearing," as this finding is arbitrary, capricious, unsupported by any evidence in the record, and is otherwise impermissibly vague.*

10. *The Hearing Commissioner erred in finding that Dr. Herndon "confirms and endorses the opinions and findings of causation by the other pulmonologists in this case," as this finding is arbitrary, capricious, unsupported by the greater weight of the evidence, and is otherwise impermissibly vague and illustrative of the Hearing Commissioner's failure to comprehend the evidence in this claim.*

11. *The Hearing Commissioner erred in finding that the "Claimant is entitled to temporary total disability benefits for all missed periods of work since June 1, 2012," as this conclusory finding is arbitrary, capricious, unsupported by the greater weight of the evidence, and is otherwise impermissibly vague.*

12. *The Hearing Commissioner erred in finding that "the Claimant is entitled to ... reimbursement of all causally-related medical treatment in this case from the date of accident to the present," as this conclusory finding is arbitrary, capricious, unsupported by the greater weight of the evidence, impermissibly vague, and contrary to the applicable law.*

13. *The Hearing Commissioner erred in finding that the "Claimant failed to sustain her burden of proving a compensable occupational disease claim as I find her claim, although causally-related, does not result in disability," as this conclusory finding is arbitrary, capricious, unsupported by the greater weight of the evidence, is impermissibly vague and contrary to the applicable law.*

14. *The Hearing Commissioner erred in failing to find that the Claimant failed to meet any of the requirements of the Occupational Disease Statue, S.C. Code Ann. § 42-11-60 based upon the greater weight of the evidence and the applicable law. In fact, the Hearing Commissioner erred as a matter of law in failing to make detailed factual findings regarding the requirements of the Occupational Disease Statute.*

15. *The Hearing Commissioner erred in finding that "the Claimant has sustained a 30% permanent partial disability to each lung," as this conclusory finding is arbitrary, capricious, unsupported by the greater weight of the evidence, is impermissibly vague, and is otherwise contrary to the applicable law.*

16. *The Hearing Commissioner erred in finding that "Claimant's disability is substantially greater in this case," as this conclusory finding is arbitrary, capricious, inconsistent with the Hearing Commissioner's previous findings, unsupported by the greater weight of the evidence, is impermissibly vague, and is otherwise contrary to the applicable law.*

17. *The Hearing Commissioner erred in finding that the Claimant "is entitled to a lump sum of her benefits," as this conclusory finding is arbitrary, capricious, unsupported by the greater weight of the evidence, impermissibly vague, and contrary to the applicable law.*

18. *The Hearing Commission erred as a matter of law in failing to make any meaningful or detailed conclusions of law on any of the issues in this claim.*

19. *The Hearing Commissioner erred as a matter of law in vaguely concluding that "[u]nder § 42-1-160, the Claimant has sustained her burden of proving a compensable injury to her lungs, arising out of the course and scope of his [sic] employment," as this conclusion is arbitrary, capricious, impermissibly vague, and otherwise contrary to the greater weight of the evidence and the applicable law.*

20. *The Hearing Commissioner erred in failing to make any meaningful or detailed conclusion of law under S.C. Code Reg. 67-1101 and in concluding that "Claimant is entitled to an award of 30% to each lung," as this conclusion is arbitrary, capricious, impermissibly vague, and otherwise contrary to the greater weight of the evidence and the applicable law.*

21. *The Hearing Commissioner erred in failing to make any meaningful or detailed conclusion of law under S.C. Code Ann. § 42-15-60 and in concluding that "Defendants are responsible for all causally related medical expenses, [sic] and Claimant's lifetime future causally-related medical treatment to her lungs," as this conclusion is arbitrary, capricious, impermissibly vague, and otherwise contrary to the greater weight of the evidence and the applicable law.*

22. *The Hearing Commissioner erred in vaguely concluding that "Claimant has reached maximum medical improvement in this case as of August 27, 2014," as*

this conclusion is arbitrary, capricious, impermissibly vague, and otherwise contrary to the greater weight of the evidence and the applicable law.

23. *The Hearing Commissioner erred in failing to make any meaningful or detailed conclusion of law with regard to the Claimant's alleged period of temporary disability and in concluding that "Defendants are responsible for all temporary total disability for all periods missed from work since the date of the accident. Claimant is entitled to temporary total disability benefits from June 1, 2012 through August 27, 2014," as these conclusions are arbitrary, capricious, impermissibly vague, internally inconsistent, and otherwise contrary to the greater weight of the evidence and the applicable law.*

24. *The Hearing Commissioner erred in failing to make any meaningful or detailed conclusion of law with regard to S.C. Code Ann. § 42-11-60.*

25. *The Hearing Commissioner erred in concluding that the "Claimant is entitled to causally-related authorized medical treatment for her lungs under § 42-15-60 as long as such medical treatment continues to be recommended by the treating physicians," as this conclusion is arbitrary, capricious, impermissibly vague, and otherwise contrary to the greater weight of the evidence and the applicable law.*

26. *The Hearing Commissioner erred in ordering that the "Claimant is entitled to a lump-sum [sic] award of 30% permanent partial disability to each lung pursuant to Reg. 67-1101, resulting in a total award of $103,668.00," as this order is arbitrary, capricious, impermissibly vague, and otherwise contrary to the greater weight of the evidence and the applicable law.*

27. *The Hearing Commissioner erred in ordering that the "Claimant is entitled to a lump-sum [sic] back payment of temporary disability benefits," as this order is arbitrary, capricious, impermissibly vague, and otherwise contrary to the greater weight of the evidence and the applicable law.*

28. *The Hearing Commissioner erred in ordering that the "Claimant is entitled to future causally-related medical treatment for her lungs to include medications, office visits, breathing treatments and inhalers," as this order is arbitrary, capricious, impermissibly vague, and otherwise contrary to the greater weight of the evidence and the applicable law.*

29. *The Hearing Commissioner erred in ordering that "the Defendants [sic] are liable for all previously incurred medical expenses causally related to the Claimant's work injury," as this order is arbitrary, capricious, impermissibly vague, and otherwise contrary to the greater weight of the evidence and the applicable law.*

30. *The Hearing Commissioner erred in ordering that "Claimant is entitled to reimbursement for all out-of-pocket causally-related expenses to include mileage reimbursement," as this order is arbitrary, capricious, impermissibly vague, and otherwise contrary to the greater weight of the evidence and the applicable law.*

Discussion

The Hearing Commissioner found that workplace exposure to chemicals on June 1, 2012 "caused occupationally worsened asthma." However, not even the Claimant's own testimony supports this finding, which is hereby reversed in accordance with the greater weight of the evidence and the applicable law.

When asked what happened to her on June 1, 2012, the Claimant testified that "I started having a little bit of pain in my face...my face looked swollen." (T. pp.25, line 16—p.27, line 9). According to the Claimant, she believed she was experiencing a recurrence of the Bells Palsy that had prevented her from working in prior months. Even when asked to specifically describe all of the symptoms she experienced on June 1, 2012, the Claimant testified about only "swelling of the face" and "dilation of the eyes." (T. p.56, lines 20-23). On cross examination, the Claimant was asked,

> "Q. And nothing took your breath away on June 1st, 2012, did it?
>
> A. No."

(T. p.75, lines 9-11). At no time did the Claimant did describe any injury to her lungs or problems breathing on June 1, 2012, which is inconsistent with the Hearing Commissioner's finding that she injured her lungs on that date.[1]

The Claimant admits that on June 1, 2012 and in the days that followed, she was "not in direct respiratory distress" and that she did not even call her pulmonologist or

[1] The Clamant described an incident involving exposure to "Sharpie" markers in the Spring of 2014 causing acute "respiratory distress" and she required her inhaler. The Claimant admitted that she did not experience any such acute respiratory attack at MeadWestvaco on June 1, 2012 or at any other time. (T. p.97, line 11—p.98. line 3).

seek medical treatment for her lungs. (T. p.64, lines 9-11). In fact, the Claimant admits that she didn't even need to take her long-prescribed asthma medications (Advair, Albuterol) on June 1, 2012 or the weeks that followed because she didn't "note" any problems with her breathing. (T. pp.63—65).

The Claimant admits telling the first doctor she saw following the alleged accident of June 1, 2012, Dr. Bahadori (her neurologist), that she had "no shortness of breath" associated with the June 1, 2012 incident when she allegedly experienced facial swelling. (T. p.67, lines 9—20; Claimant's APA p.82--83). Dr. Bahadori's July 5, 2012 office note also states that "[s]he says she had no shortness of breath" with her alleged chemical exposure. (Claimant's APA p. 84). Obviously, Dr. Bahadori's records do not support a finding that the Claimant injured her lungs or experienced a worsening of her pre-existing asthma on June 1, 2012.

Similarly, the Claimant admits she did not report any problems with her lungs when she saw her allergist, Dr. Davidson on June 7, 2012 – less than a week after the alleged accident. (T. p.68, lines 15-22).[2] The Claimant admits that she was not having any lung or respiratory problem on June 7, 2012 when she saw Dr. Davidson for a regularly-scheduled appointment. (T. p.68, line 20 – p. 69, line 12; p.74, lines 2-4). She agreed that Dr. Davidson examined her on June 7, 2012 and found her lungs to be "clear to auscultation bilaterally." (Claimant's APA p. 105). Dr. Davidson did not make any changes in her medications and assessed her asthma to be "Stable." (Claimant's APA p.105; T. p.71, lines 19--22).

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[2] The Claimant was also seen in the MeadWestvaco Medical Department on June 7, 2012, at which time she denied having shortness of breath and denied wheezing. (Defendant' APA p.177).

Even a month after her alleged accident at work, the Claimant still had not experienced any problem breathing or any change in her pre-existing asthma. According to Dr. Davidson's July 3, 2012 office note,

> "Patient stopped taking her Advair regularly with the warmer weather, she states she only needs to take it irregularly in the winter and **she denies any respiratory symptoms.**" (Claimant's APA p. 108, emphasis added).

The Claimant admitted at the hearing that she was not taking her Advair and was not having any respiratory symptoms in the month following the alleged accident.[3] (T. p.73, line 12—p.74). She further testified "I did not have any symptoms of respiratory distress" and was only seeing Dr. Davdison for a regularly-scheduled appointment in July 2012. (T. p.74, lines 1-4). This evidence is certainly inconsistent with any finding that her asthma was suddenly worsened as a result of an alleged accident on June 1, 2012.

Having established that the Claimant did not experience any change in her respiratory status in the days and weeks and months following the alleged accident on June 1, 2012, the Claimant was specifically asked when she experienced a change in her breathing, to which she testified "I don't know" and "I can't tell you" and "I can't give you an exact date." (APA p. 76, lines 8—25). The Claimant later testified that she began using her inhaler more frequently in December 2012 – six (6) months after she last

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[3] Note that the history described herein and reflected in the medical records and the Claimant's sworn testimony is inconsistent with the history the Claimant later gave Dr. Spandorfer, upon which he relied in addressing the issue of causation. (4/30/14 Deposition of Dr. Spandorfer, p.12, line 18 – p.19, line 5).

worked at MeadWestvaco. (T. p.90, line 7 –p.91, line 4). Despite this testimony, the Hearing Commissioner inexplicably found that the Claimant "sustained her burden of proving a compensable injury by accident (aggravation to her lungs, pursuant to § 42-1-160 on June 1, 2012," that her "asthma was well controlled until ... June 1, 2012." These findings are not supported by the greater weight of the evidence in the record, which clearly shows that the Claimant's asthma was not aggravated by any alleged accident on June 1, 2012.

The Panel further finds that the Hearing Commissioner misconstrued the opinions of Dr. Herndon in making her findings of fact. Dr. Herndon, a pulmonologist, evaluated the Claimant on May 10, 2013 and concluded that her alleged exposure to chemicals at work "could have certainly exacerbated her asthma at the time of exposure, however, they are, to a reasonable degree of medical certainty, much less likely to cause permanent lung impairment (above and beyond her preexisting disease)." (Claimant's APA p. 127). Dr. Herndon later qualified that opinion at his deposition, at which time he testified that he could not state with any certainty that the Claimant even had asthma, considering her repeatedly normal physical exams and her repeated pulmonary function studies that showed no evidence of any obstructive lung disease.[4]

[4] Note that even Dr. Spandorfer was forced to admit that his diagnosis of asthma was based on nothing more that the Claimant's "subjective complaints, which haven't been verified and which are inconsistent with the reports she gave other doctors prior to coming to see [him] on August 23rd of 2012." (4/30/14 Spandorfer T. p.22, lines 1–6).

Dr. Herndon was also asked,

> "Q. Is there any objective evidence ... that her breathing problems are caused or aggravated by any alleged exposure at work?
>
> A. There is no objective evidence."

(Herndon T. p.26, lines 19—23). Dr. Herndon further testified:

> "Q. ...this pulmonary function study that you did on May 10, 2013...does it show or provide any objective evidence that she has occupational asthma?
>
> A. No. ...It shows restrictive lung disease.
>
> Q. Okay. And can you state to a reasonable degree of medical certainty whether or not her restrictive lung disease was caused by any alleged exposure at work?
>
> A. No, I can't – I can't with any reasonable medical certainty."

(Herndon T. p.40, line 21 – p.41, line 10). Dr. Herndon was also asked,

> "Q.....Can you state to a reasonable degree of medical certainty whether or not Ms. Johnson has any permanent impairment of her lungs as a result of any alleged exposure at work?
>
> A. I think it is unlikely."

(Herndon T. p. 42, lines 17–21). Lastly, Dr. Herndon testified that he would not defer to the Claimant's other physicians. In fact, Dr. Herndon noted that the pulmonary function testing done by Dr. Spandorfer did not even meet the validity criteria established by the American Thoracic Society and his tests were not valid. (Herndon T. p.75).

Despite this testimony, the Hearing Commissioner inexplicably found that Dr. Herndon "confirms that the Claimant has occupationally worsened asthma... he confirms and endorses the opinions and findings of causation of the other pulmonologists in this case." This finding is simply incorrect and not supported by the record.

Furthermore, according to the Hearing Commissioner, "the Claimant is entitled to temporary total disability benefits for all missed periods of work since June 1, 2012." However, the Claimant testified that she stopped working in July 2012, not because she had asthma, but because her eyes were "swollen." (T. p. 56, lines 5-6). The doctors who endorsed her short and long term disability applications indicated that it was non-work-related problems with left arm weakness, Bells Palsy, and facial swelling that rendered her unable to work. (Defendant's APA pp.235, 310, 486, 528, and 715). Even as of August 1, 2013 – more than a year after the alleged injury to her lungs, the Claimant mentioned no issues with her lungs or asthma in support of her Long Term Disability Claim, though she complained in detail about facial swelling and migraine headaches. (Defendant's APA pp.753–755). At the hearing, the Claimant admitted that she was not out of work due to asthma or shortness of breath. (T. p.77, lines 2–5). Instead, she testified that she is out of work due to Bells Palsy, radiculopathy, migraine headaches,

and facial swelling. (T. pp. 78-81). As a result of these personal health problems, she continues to receive long term disability benefits.

Based on the greater weight of the evidence in the record, the Claimant's inability to earn wages since 2012 is not causally-related to any alleged accident on June 1, 2012, nor is it related to her pre-existing asthma. Therefore, the Hearing Commissioner's finding that "the Claimant is unable to return to gainful employment as a chemist and will be severely restricted in any environment" and her finding that the Claimant is "entitled to temporary total disability benefits for all missed periods of work" must be reversed and vacated.[5]

The Hearing Commissioner further found that the Claimant had a "30% permanent partial disability to each lung" (emphasis original). However, this finding is not supported by the greater weight of the evidence and is hereby reversed and vacated. Even the Claimant's own physician, Dr. Spandorfer, admitted that the Claimant's pulmonary function testing was "[b]etter" in August 2012 than it had been in February 2012, four (4) months prior to the alleged accident. (4/30/14 Spandorfer T. p.19, lines 13—18). Dr. Spandorfer admitted that the Claimant's pulmonary function had "improved" between February 2012 and August 2012. (4/30/14 Spandorfer T. p.20, lines 2—6, p.58 lines 2—7). The Claimant's pulmonary function improved even further by the last time she was seen in April 2014. (4/30/14 Spandorfer T. p.31, lines 7—12). Dr. Spandorfer admitted that he did not think the Claimant was objectively worse since June 1, 2012. (4/30/14 Spandorfer T. p.58, lines 13—15).

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[5] Note that the Hearing Commissioner failed to issue any detailed conclusions of law and failed to apply the law to the facts of this case. This failure is in violation of the Administrative Procedures Act and alone warrants the reversal and vacation of the Hearing Commissioner's Decision and Order.

As a result, Dr. Spandorfer was asked

> "Q. ...So can you state to a reasonable degree of medical certainty that her impairment has changed or worsened since February 23rd of 2012?
> A. I did not do a impairment rating on February 12, 20- -- I wasn't - I didn't do one. So I can't state that it's changed."

(4/30/14 Spandorfer T. p.44, lines 7—12).

Dr. Spandorfer further testified that in addition to asthma (an obstructive lung disease), he believed the Claimant had a restrictive lung problem due to her body habitus. (4/30/14 Spandorfer T. p.39, lines 12-15). Obviously, the restrictive lung problem is not causally-related to her employment; however, Dr. Spandorfer admitted that he could not state with any certainty what portion of the Claimant's impairment rating was due to a restrictive deficit, versus an obstructive deficit such as asthma." (4/30/14 Spandorfer T. p.39, lines 18-22; p.64, lines 15—19). So even if there were some reason to increase her impairment rating after June 1, 2012 (which there is not), it would be impossible to attribute this rating to her alleged accident at work without resorting to pure, impermissible speculation.

The testimony of Dr. Spandorfer, coupled with the testimony of Dr. Herndon that it would be unlikely that she would have any permanent impairment of her lungs as a result of any alleged exposure at work (Herndon T. p.42, lines 17-21) render the Hearing Commissioner's finding that the Claimant has a "30% permanent partial disability to each lung" is entirely speculative. Therefore, the Hearing Commissioner's finding in this regard must be reversed.

In addition, the Hearing Commissioner's finding regarding the Claimant's entitlement to medical treatment must be reversed based upon the greater weight of the evidence and the applicable law. The Claimant has been receiving medical treatment, including prescription medications and inhalers, for many years prior to the alleged accident on June 1, 2012. Since June 1, 2012, her treatment regimen has not changed. In fact, as of April 2014 when she was last evaluated by Dr. Spandorfer, she was stable and did not require steroids or antibiotics and only needed bronchodilator therapy intermittently. (4/30/14 Spandorfer p. 30, lines 7—13). Dr. Spandorfer was asked by the Claimant's attorney whether her medication has increased or decreased since February 2012, to which he responded "[i]t appears to be the same." (4/30/14 Spandorfer T. p.56, lines 7—11). Dr. Herndon testified that "[t]o a reasonable degree of medical certainty, she likely doesn't require any further treatments above and beyond her baseline therapy for asthma." (Claimant's APA p. 127).

Despite this evidence, the Hearing Commissioner found that "the Claimant is entitled to and the Defendants [sic] are responsible for, reimbursement of all causally-related medical treatment in this case from the date of the accident to the present," as well as "lifetime future medical treatment." However, the only "medical treatment in this case" is the medical treatment the Claimant has received for her pre-existing condition. There is no evidence that she requires any new or different treatment as a result of an alleged accident on June 1, 2012. Therefore, the Hearing Commissioner's findings in this regard is without competent evidentiary support and must be reversed.

Conclusion

After carefully weighing the evidence in the record and considering the arguments of the parties, the Hearing Commissioner's November 24, 2014 Decision and Order is hereby REVERSED and VACATED. The Appellate Panel hereby adopts the following as the final Decision and Order of the Workers' Compensation Commission:

FINDINGS OF FACT

1. The Claimant did not sustain any injury to her lungs or respiratory system on June 1, 2012, as alleged. The greater weight of the evidence, including the Claimant's own testimony and the medical records of the physicians, reveal that the Claimant did not experience any injury to her lungs, shortness of breath, or any problem breathing on June 1, 2012 and she continued to deny having any lung or respiratory symptoms to her doctors in the days and weeks that followed.

2. The alleged events of June 1, 2012 did not cause or aggravate the Claimant's pre-existing asthma or restrictive lung disease. Based upon the greater weight of the evidence, including the Claimant's own testimony and the records of her doctors, the Claimant began receiving treatment for asthma and restrictive lung disease approximately 7 years prior to the alleged accident and was still prescribed regular treatment for these conditions at the time of the alleged accident. In the days and weeks following the alleged accident on June 1, 2012, the Claimant not only denied having any lung or respiratory symptoms to her doctors, but she admitted that she was not even taking her regularly-prescribed medications (Advair). Even despite the fact that she was not taking her regularly-prescribed pulmonary medicines, her allergist found that her pre-existing asthma was "stable" when he evaluated her on June 7, 2012. In addition,

the Claimant's personal pulmonologist was forced to concede that, not only have the Claimant's medications not changed since June 1, 2012, but her respiratory function has improved by every objective measure since that time.

3. The Claimant has no loss of wage-earning capacity as a result of any alleged accident on June 1, 2012. Based upon the greater weight of the evidence, including the Claimant's own testimony, the records of her doctors, and other documents submitted by the Defendant, the Claimant stopped working after June 1, 2012, not because of any alleged injury to her lungs or respiratory system, but because her eyes were allegedly swollen. The doctors who endorsed her short and long term disability applications indicated that it was non-work-related problems with left arm weakness, Bells Palsy, and facial swelling that rendered her unable to work. Even as late as August 1, 2013 – more than a year after the alleged accident – the Clamant made no mention of any issue with her lungs or respiratory system in support of her long term disability claim, though she complained in detail about facial swelling and migraine headaches. Furthermore, the Claimant testified at the hearing before Commissioner Taylor that she was not out of work due to asthma or shortness of breath. Therefore, any incapacity to earn wages is due to the Claimant's personal health problems that are unrelated to her employment, including her Bells Palsy, radiculopathy, migraine headaches, and facial swelling.

4. The Claimant has no permanent impairment or loss of use of her lungs or respiratory system as a result of any alleged accident on June 1, 2012. The greater weight of the evidence, including the testimony of the Claimant's own pulmonologist and the opinions of Dr. Herndon, reveal that the Claimant's lung function has improved by every objective measure since June 1, 2012. In addition, the Claimant has known pre-existing conditions, including asthma and restrictive lung disease, and there is no

competent evidence that the Claimant's impairment has changed since June 1, 2012 and, even if it had, there is no competent evidence as to what portion of this impairment is attributable to the Claimant's admittedly non-work-related causes (body habitus causing restrictive lung disease). As a result, to find that any of the impairment ratings in the record are causally related to the alleged accident of June 1, 2012 would require the Commission to resort to pure, impermissible speculation.

CONCLUSIONS OF LAW

1. Pursuant to S.C. Code Ann. § 42-1-160, the Claimant did not sustain any injury to her lungs or respiratory system by accident arising out of and in the course of her employment on June 1, 2012 based upon the greater weight of the evidence in the record.

2. Pursuant to S.C. Code Ann. § § 42-9-10 and 42-9-20, the Claimant's alleged loss of wage-earning capacity is not causally-related to any alleged accident or injury on June 1, 2012 based upon the greater weight of the evidence in the record.

3. Pursuant to S.C. Code Ann. § 42-9-30 and S.C. Code Reg. 67-1101, the Claimant did not sustain any permanent loss of use of any body member or system as a result of the alleged accident on June 1, 2012, based upon the greater weight of the evidence in the record.

4. Pursuant to S.C. Code Ann. § 42-9-35, the Claimant failed to establish by a preponderance of the evidence that the alleged accident on June 1, 2012 aggravated her known pre-existing conditions. In addition, because the Claimant did not sustain any disability or physical impairment as a result of the alleged accident on June 1, 2012 based upon the greater weight of the evidence in the record, she is not entitled to an award of benefits.

Conclusion

IT IS, THEREFORE, HEREBY ORDERED that the Decision and Order entered by Hearing Commissioner Taylor on November 24, 2014 is hereby REVERSED and VACATED.

IT IS FURTHER ORDERED that the Claimant is not entitled to and the Defendants shall have no liability for any benefits under the Workers' Compensation Act.

IT IS FURTHER ORDERED that Workers' Compensation Claim 1219931 is hereby DENIED and DISMISSED WITH PREJUDICE.

IT IS SO ORDERED!

By

The Honorable T. Scott Beck
Workers' Compensation Commissioner

June 12, 2015

WE CONCUR:

The Honorable Susan S. Barden, Commissioner

The Honorable Avery B. Wilkerson, Jr., Commissioner

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on September 1, 2015